IN THE

Supreme Court of the United States

No. 408 October Term, 1958

PENNSYLVANIA PUBLIC UTILITY COMMISSION,

Petitioner

vs.

UNITED STATES OF AMERICA

PETITIONER'S REPLY BRIEF SUR PETITION FOR WRIT OF CERTIORARI

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

INTRODUCTORY

Your Petitioner, Pennsylvania Public Utility Commission, files this reply brief pursuant to Rule 24(4), for the purpose of briefly answering and correcting certain of the statements contained in the opposition brief filed by the United States.

ARGUMENT

The United States asserts (brief, 3, footnote) that the Pennsylvania law conflicts with federal functions for the reason that "if state law is controlling, the United States could obtain only such negotiated low rates as the carrier was willing to convert into rates applicable to *all* shippers" (emphasis supplied). This assertion is incorrect.

In point of fact, your petitioner entertains a large volume of applications for approval of special rates, which it frequently allows to be placed in effect on one day's notice. Two such applications were appended as illustrations to your petitioner's supplemental brief filed in the Supreme Court of Pennsylvania, and are now appended hereto. Commission approval of such negotiated rates, and their effectiveness on one day's notice, is a complete answer to the contention of the United States that a negotiated lower rate applicable to the United States could become effective only if applied by the carrier to all shippers.

The United States asserts (brief, 4) that the Pennsylvania Public Utility Law "completely forbids federal officers from discharging their functions" requiring them to negotiate for rates. It is submitted that this statement is erroneous. The Pennsylvania law nowhere forbids negotiations for rates. What is proscribed is merely the placing in effect of a special or negotiated rate without prior filing with the Commission. Assuming such filing, the parties may nego-

tiate for and, on notice, place in effect such rates as they please. The situation is markedly different from that in the California case, where the negotiations themselves fall under the ban of the state law.

It should also be noted that the Commission's orders did not pass or purport to pass on the reasonableness of any particular rate. They required only that the rates, such as they were, be filed, or, in the alternative, that the carrier cease and desist transportation at rates other than contained in its tariffs.

Respectfully submitted.

MILES WARNER
Assistant Counsel

JACK F. ASCHINGER
Assistant Counsel

THOMAS M. KERRIGAN
Counsel
For Petitioner

APPENDIX H

Hall's Motor Transit Company
Fifth and Vine Streets
Sunbury, Pennsylvania

February 1, 1958

Received Feb. 4, 1958, Bureau of Transportation, Public Utility Comm.

To: Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania

Hall's Motor Transit Company does hereby respectfully petition the Commission that permission be granted under Article III, Section 308 of the Public Utility Law to put in force the following rate to become effective one (1) day after the filing thereof with the Commission.

Freight, All Kinds, in straight or mixed truckloads, from Marietta Transportation Corps Depot to New Cumberland Quartermaster Depot, 24 cents per one hundred pounds (Truckload minimum weight 25,000 pounds). This rate to apply for each vehicle utilized. Applicable only on shipments moving on U. S. Government Bills of Lading. This rate to expire six months after the effective date.

Your petitioner represents that the said rate will be published in the next consecutively numbered supplement to Tariff Freight Pa. P.U.C. No. 30 and will supersede and take the place of rates named in the

tariff and or effective supplements issued by the named carrier.

And your petitioner further bases such request upon the following facts which present certain special circumstances and conditions justifying the request herein made:

Certain activities and functions of the Marietta Transportation Corps Depot are to be transferred to New Cumberland Depot, Pa. There are approximately fifty truckloads of property that require specialized services of motor transport for movement to New Cumberland. The Department of Army has asked us to perform the services required, but participation in the traffic is dependent upon the establishment of a rate of 24 cents per 100 pounds to meet the budgetary limitations of the Federal Government.

We are in a position to supply needed equipment with a minimum of advance notice. Inasmuch as the entire movement is to be completed within the next several months, it is important the vehicles be available as demanded. For the same reason, it is important that the carrier be permitted to put into effect a rate which will move the traffic with a minimum of advance notice to the shipping public.

It is the prayer of your petitioner that permission be granted to depart from tariff regulations and publish this rate to become effective one (1) day after the publication thereof.

HALL'S MOTOR TRANSIT COMPANY
By W. O. RUCHELSBACH
W. O. RUCHELSBACH
General Traffic Manager

Sworn and subscribed to before me this 1st day of February, 1958.

J. W. Wingard,
(Seal) *Notary Public.*

My Commission expires January 29th, 1959.

APPENDIX I

File: 3B No. 20

Received Penna. Public Utility Comm., Dec. 11, 1957.
Bureau of Transportation, Tariff Division

December 10, 1957

To: Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania

Motor Freight Express, certificated at Docket A. 22955 and various Subs thereunder, does respectfully petition the Commission that it be permitted under Article III, Section 308 of the Public Utility Law to put in force the following rates to become effective one day after the filing thereof with the Commission.

Cylinders, Steel, for shipping Air, Gases or Liquids under pressure.

NOI, old or used.

BETWEEN	AND
Middletown, Pa.	Philadelphia, Pa.
T.L. RATES	MIN. TL. WT.
91	12,000
71	16,000
59	20,000
51	24,000
45	28,000
41	32,000
38	36,000
82	12,000

*64	16,000
*53	20,000
*46	24,000
*40	28,000
*37	32,000
*34	36,000

Scale numbers suffixed with * apply when loading and unloading is performed by the government or at their expense, and the trailer is sealed by the government for the over-the-road haul. Notation to this effect must be made on the Bill of Lading, otherwise the lower level of rates will be inoperative.

Your petitioner represents that the said rates above mentioned will be published in Item 260E, Supplement No. 27 to Freight Pa. PUC #42 and will supersede and take the place of the rates on like traffic from and to the points above named in Item 260 of Supplement 24.

And your petitioner further bases such request upon the following facts, which present certain special circumstances and conditions justifying the request herein made:

The Federal Government has a supply on hand at Middletown, consisting of used cylinders which are in need of repair and have a contract with a firm in Philadelphia for the repairs to be made. It is the contention of the Government, concurred in by petitioner, that the proposed rates are just and equitable and in no wise improper or illegal. Petitioner avers that the proposed rates and minimums will produce

compensatory revenue, and permit a free flow of the traffic, adequate to meet the needs of the National Defense.

Further, the proposed rates meet the competition of carriers operating between Middletown and Philadelphia over interstate routes.

Respectfully submitted,
MOTOR FREIGHT EXPRESS
By J. W. WATSON
J. W. WATSON, *G.T.M.*

Signed and dated this 10th day of December, 1957.

Commonwealth of Pennsylvania, County of York

Personally appeared before me, a Notary Public, in and for said County and State, J. W. Watson, who being duly sworn according to law, doth depose and say that the facts contained in the foregoing petition are true and correct to the best of his knowledge and belief, and as to those matters and things stated on belief, he believes them to be true.

Sworn and subscribed to before me this 10*th* day of December, 1957.

Paul E. Bear
(Seal) *Notary Public.*

My Commission expires September 26, 1960.